

AMENDED IN ASSEMBLY SEPTEMBER 7, 2007

AMENDED IN ASSEMBLY SEPTEMBER 5, 2007

AMENDED IN ASSEMBLY JULY 2, 2007

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 16, 2007

AMENDED IN SENATE APRIL 10, 2007

## SENATE BILL

**No. 275**

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### Introduced by Senator Cedillo

February 15, 2007

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An act to ~~amend Section 1290 of~~ *add Section 43.975 to the Civil Code*, and to add Section 1262.3 to the Health and Safety Code, relating to health facilities.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 275, as amended, Cedillo. Health facilities: patient transporting.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Effective July 1, 2007, these responsibilities will be transferred to the State Department of Public Health. A violation of these provisions is a crime.

Existing law requires each hospital to have in effect a written discharge planning policy and process that requires appropriate arrangements for posthospital care and a process that requires that each patient be informed, orally or in writing, of the continuing care requirements following discharge from the hospital, as specified.

Existing law also prohibits a hospital from causing the transfer of homeless patients from one county to another county for the purpose

of receiving supportive services from a social service agency, health care service provider, or nonprofit social service agency within the other county, without prior notice and authorization, as specified.

This bill would prohibit a general acute care hospital, acute psychiatric hospital, or special hospital from causing a patient to be transported to a location other than the residence of the patient without the ~~informed~~ *written* consent of the patient, except when the patient is lawfully transferred to another health facility. This bill would make the violation of this bill subject to ~~administrative and civil penalties, and punishable as a misdemeanor~~, as specified. This bill would declare that these civil penalties shall, upon appropriation, be used exclusively for the provision of posthospital recuperative beds transitional housing and mental health counseling programs for the homeless.

By ~~creating a new~~ *changing the definition of an existing* crime, this bill would result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 43.975 is added to the Civil Code,*
- 2     *immediately following Section 43.97, to read:*
- 3     *43.975. (a) Upon a second violation of subdivision (a) of*
- 4     *Section 1262.3 of the Health and Safety Code, a general acute*
- 5     *care hospital, acute psychiatric hospital, or special hospital, shall*
- 6     *be subject to a civil penalty of one hundred fifty thousand dollars*
- 7     *(\$150,000) for the second violation. The Attorney General, a*
- 8     *district attorney, a city attorney of a city having a population in*
- 9     *excess of 750,000, or a city attorney of a city and county, may*
- 10    *bring a civil action in the name of the People of the State of*
- 11    *California seeking civil penalties, preventive relief, including an*
- 12    *application for a permanent or temporary injunction, restraining*
- 13    *order, or other order against the health facility.*
- 14    *(b) Any general acute care hospital, acute psychiatric hospital,*
- 15    *or special hospital convicted of a violation of subdivision (a) of*

1 *Section 1262.3 of the Health and Safety Code, that has been*  
2 *previously penalized for two separate violations of subdivision (a)*  
3 *of Section 1262.3 of the Health and Safety Code may be subject*  
4 *to civil penalties of no less than three hundred thousand dollars*  
5 *(\$300,000).*

6 *(c) In determining the civil penalty to be imposed pursuant to*  
7 *this section, the court shall consider all relevant facts, including,*  
8 *but not limited to, all of the following:*

9 *(1) Whether the violation exposed the patient to a risk of death*  
10 *or serious physical harm.*

11 *(2) Whether the violation had a direct or immediate relationship*  
12 *to the health, safety, or security of the patient.*

13 *(3) Evidence, if any, of willfulness.*

14 *(4) The number of repeated violations.*

15 *(5) The presence or absence of good faith efforts by the*  
16 *defendant to prevent the violation.*

17 *(d) Any investigative costs incurred in the enforcement of this*  
18 *section, including, but not limited to, experts and attorney's fees*  
19 *incurred by the Attorney General, district attorney, or city attorney*  
20 *in carrying out this section shall be recoverable from the liable*  
21 *general acute care hospital, acute psychiatric hospital, or special*  
22 *hospital.*

23 *(e) If the action authorized by this section is brought by the*  
24 *Attorney General, the civil penalty collected shall be paid to the*  
25 *General Fund. If the action is brought by a district attorney, the*  
26 *penalty collected shall be paid to the treasurer of the county in*  
27 *which the judgment was entered. If the action is brought by a city*  
28 *attorney, the civil penalty collected shall be paid to the treasurer*  
29 *of the city in which the judgment was entered. The funds described*  
30 *pursuant to this subdivision shall, upon appropriation, be used*  
31 *exclusively for the provision of post-hospital recuperative beds,*  
32 *transitional housing and mental health counseling programs for*  
33 *the homeless.*

34 *(f) Nothing in this section shall preclude criminal prosecution*  
35 *or civil action under any other provision of law. Furthermore,*  
36 *nothing in this section shall limit or abridge the authority of any*  
37 *city or county to adopt an ordinance authorizing investigations or*  
38 *inspections, or implementing and enforcing restrictions dealing*  
39 *with patient transportation.*

1     ~~SECTION 1.~~

2     ~~SEC. 2.~~ Section 1262.3 is added to the Health and Safety Code,  
3 to read:

4     1262.3. (a) No general acute care hospital, acute psychiatric  
5 hospital, or special hospital may cause a patient to be transported  
6 to a location other than the residence of the patient without the  
7 ~~patient's clearly and explicitly manifested consent, knowingly and~~  
8 ~~intelligently given without duress or coercion, except when the~~  
9 ~~patient is lawfully transferred to another health facility. patients~~  
10 ~~written consent, except when the patient is appropriately~~  
11 ~~transferred to another licensed health facility pursuant to other~~  
12 ~~provisions of law.~~

13     (b) For the purposes of this section, "written consent" means  
14 written consent signed by the patient or the patient's legal  
15 representatives, that shall be knowingly and voluntarily given.

16     ~~(b)~~

17     (c) For purposes of this section, "residence of the patient" means  
18 the home of the patient, the fixed and regular nighttime residence  
19 or domicile of the patient, or, in the case of a homeless patient, as  
20 defined in Section 1262.4, the location given to the hospital by the  
21 patient as his or her principle dwelling.

22     (d) If the department determines that a hospital has violated  
23 subdivision (a), it shall consider, at a minimum, all of the following  
24 actions:

25     (1) Assessment of an administrative penalty pursuant to Section  
26 1280.1 or Section 1280.3.

27     (2) Referral to appropriate authorities for consideration of  
28 commencing an action for violation of Section 1290.

29     (e) This section shall not apply to patients in state hospitals  
30 operated and administered by the State Department of Mental  
31 Health who are civilly or criminally committed and subject to  
32 transfer to the State Department of Corrections and Rehabilitation,  
33 the Forensic Conditional Release Program, or to a court for further  
34 proceedings.

35     (f) This section shall not apply to patients who remain under  
36 the jurisdiction of the State Department of Corrections and  
37 Rehabilitation.

38     (g) This section shall not apply to residents of state  
39 developmental centers operated and administered by the State  
40 Department of Developmental Services who are discharged to the

1 *community pursuant to the Lanterman Developmental Disabilities*  
2 *Services Act, and in accordance with an individual program plan,*  
3 *as defined in Section 4646 of the Welfare and Institutions Code,*  
4 *developed specifically for the resident.*

5 SEC. 2. Section 1290 of the Health and Safety Code is amended  
6 to read:

7 1290. ~~(a) Except as provided in subdivision (b), (c), or (d),~~  
8 ~~any person who violates this chapter or Section 127050 or 128600,~~  
9 ~~or who willfully or repeatedly violates any rule or regulation~~  
10 ~~adopted under this chapter or Section 127050 or 128600 is guilty~~  
11 ~~of a misdemeanor and upon conviction thereof shall be punished~~  
12 ~~by a fine not to exceed one thousand dollars (\$1,000) or by~~  
13 ~~imprisonment in the county jail for a period not to exceed 180~~  
14 ~~days, or by both the fine and imprisonment.~~

15 ~~(b) Any person who violates Section 1286 is guilty of an~~  
16 ~~infraction and shall be punished by a fine of not more than one~~  
17 ~~hundred dollars (\$100).~~

18 ~~(c) Any person who willfully or repeatedly violates this chapter~~  
19 ~~or Chapter 2.4 (commencing with Section 1417), excluding~~  
20 ~~Sections 1425 and 1432, or any rule or regulation adopted under~~  
21 ~~this chapter, relating to the operation or maintenance of a long-term~~  
22 ~~health care facility as defined in Section 1418, is guilty of a~~  
23 ~~misdemeanor and upon conviction thereof shall be punished by a~~  
24 ~~fine not to exceed two thousand five hundred dollars (\$2,500) or~~  
25 ~~by imprisonment in the county jail for a period not to exceed 180~~  
26 ~~days, or by both.~~

27 In determining the punishment to be imposed upon a conviction  
28 under this subdivision, the court shall consider all relevant facts,  
29 including, but not limited to, the following:

30 (1) ~~Whether the violation exposed the patient to the risk of~~  
31 ~~death or serious physical harm.~~

32 (2) ~~Whether the violation had a direct or immediate relationship~~  
33 ~~to the health, safety, or security of the patient.~~

34 (3) ~~Evidence, if any, of willfulness.~~

35 (4) ~~The number of repeated violations.~~

36 (5) ~~The presence or absence of good faith efforts by the~~  
37 ~~defendant to prevent the violation.~~

38 (d) (1) ~~A general acute care hospital, acute psychiatric hospital,~~  
39 ~~or special hospital that violates subdivision (a) of Section 1262.3~~  
40 ~~may be issued a notice of deficiency constituting an immediate~~

1 jeopardy to the health or safety of a patient pursuant to Sections  
2 1280.1 and 1280.3 and be required to submit a plan of correction.

3 (2) Upon a second violation of subdivision (a) of Section 1262.3,  
4 the general acute care hospital, acute psychiatric hospital, or special  
5 hospital, is subject to a civil penalty of one hundred fifty thousand  
6 dollars (\$150,000) for the second violation. The Attorney General,  
7 a district attorney, a city attorney of a city having a population in  
8 excess of 750,000, or a city attorney of a city and county, may  
9 bring a civil action in the name of the People of the State of  
10 California seeking civil penalties, preventive relief, including an  
11 application for a permanent or temporary injunction, restraining  
12 order, or other order against the health facility.

13 (3) Any general acute care hospital, acute psychiatric hospital,  
14 or special hospital convicted of a violation of subdivision (a) of  
15 Section 1262.3, which has been previously penalized for two  
16 separate violations of subdivision (a) of Section 1262.3, is guilty  
17 of a misdemeanor punishable by a fine of no less than three  
18 hundred thousand dollars (\$300,000).

19 (4) In determining the penalty to be imposed upon a conviction  
20 as set forth in this subdivision, the court shall consider all relevant  
21 facts, including, but not limited to, all of the following:

22 (A) Whether the violation exposed the patient to a risk of death  
23 or serious physical harm.

24 (B) Whether the violation had a direct or immediate relationship  
25 to the health, safety, or security of the patient.

26 (C) Evidence, if any, of willfulness.

27 (D) The number of repeated violations.

28 (E) The presence or absence of good faith efforts by the  
29 defendant to prevent the violation.

30 (5) Any investigative costs incurred in the enforcement of this  
31 subdivision, including, but not limited to, experts and attorney's  
32 fees incurred by the Attorney General, district attorney, or city  
33 attorney in carrying out this section shall be recoverable from the  
34 liable general acute care hospital, acute psychiatric hospital, or  
35 special hospital.

36 (6) If the action authorized by this subdivision is brought by the  
37 Attorney General, the penalty collected shall be paid to the General  
38 Fund. If the action is brought by a district attorney, the penalty  
39 collected shall be paid to the treasurer of the county in which the  
40 judgment was entered. If the action is brought by a city attorney,

1 the penalty collected shall be paid to the treasurer of the city in  
2 which the judgment was entered. The funds described pursuant to  
3 this paragraph shall, upon appropriation, be used exclusively for  
4 the provision of posthospital recuperative beds, transitional housing  
5 and mental health counseling programs for the homeless.

6 ~~(7) Nothing in this subdivision shall preclude criminal~~  
7 ~~prosecution or civil action under any other provision of law.~~  
8 Furthermore, nothing in this subdivision shall limit or abridge the  
9 authority of any city or county to adopt an ordinance authorizing  
10 investigations or inspections, or implementing and enforcing  
11 restrictions dealing with patient transport.

12 ~~(e) For the purposes of this section, “willfully” or “willful”~~  
13 ~~means the person doing an act or omitting to do an act intends the~~  
14 ~~act or omission, and knows the relevant circumstances connected~~  
15 ~~therewith.~~

16 SEC. 3. No reimbursement is required by this act pursuant to  
17 Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.